



IN THE DRAWINGS:

Formal drawings will be submitted upon notice of allowance.

REMARKS

Claims 1-15 were rejected in the first office action in which patents to Carlson, Wexler, Fuschetto, Zefran, Stewart, Tarozzi, and James were cited. In the last office action mailed 06/09/2005, Claims 16-24 were rejected for essentially the same reasons. Applicant respectfully traverses and amends his Claims to avoid the prior art cited and Applicants request the Examiner's reconsideration of the new Claims.

The claims have been amended in such a way as to describe the present invention more to emphasize the differences existing in the present invention over the prior art.

Specifically, the claims have been re-written to positively claim items referred to in the specification, including at least one aperture to allow a candle to penetrate the protective cover and be inserted into the cake placed below the protective cover. The Claims now also require the cover be made of freezer-proof materials (as is the main object of the invention, preferred embodiment and best mode as disclosed in the specifications). Additionally, Applicant has included a method Claim to require use of the device in the freezer. None of the prior art teaches, suggest or motivates the combination of apertures to allow the penetration of the cake under the cover by the candles and used in a freezer.

Regarding the cited references, Carlson 2,758,458 is intended to keep cake fresh and prevent it from drying out. There is no mention of use in a freezer, nor for apertures to allow candles to penetrate the cake as does the present invention. In fact, Carlson teaches *away* from the present invention in Carlson's specifications by this language regarding the candles; "... without being

subject to the disadvantages of having inserted into the frosting, which so often results in the cracking or crushing the frosting or the cake itself, of having the melted candle grease run down and render a portion of the frosting inedible . . .” With all due respect to the Examiner, a statement that “Carlson and the art taken as a whole *would be capable* of being placed in a freezer” seems to be made in hindsight after reading the present invention’s disclosure. The art cited does not suggest this use.

Again the Examiner states “whether the aperture was wide enough for the candle to pass through, down into the cake would have been an obvious function of whether one wanted to penetrate the cake or not.” The cited prior art does not teach, suggest or motivate the combination of apertures to allow the penetration of the cake under the cover by the candles; this also appears to be made in hindsight. Hindsight is improper in analyzing a patent’s validity under obviousness. (*Orthopedic Equipment Co. v. United States*, 705 F.2d 1005 (Fed. Cir. 1983).

Examiner asks “what does the dotted line represent?” The dotted line generally shows the cake under the cover. Another dotted line shows the bottom of the message slot; Applicant apologizes for this confusion and will amend the drawings to be more clear upon allowance. The “small rectangular slit with a hemispherical portion extending from the rectangular slot” is not the message slot, but the cover indentation, as disclosed in the specifications as element #26. The message slot is element #22 per the specifications.

According to all of the above, Applicant submits that the combination of features of the present invention and specific use would not have been obvious to one skilled in the art at the time the cited art was filed. Thus, reconsideration and allowance of the present application are

respectfully requested. Should the Examiner consider necessary any formal changes in the specification, claims and/or drawings, it is respectfully asked that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance.

RESPECTFULLY SUBMITTED,



Stephen R. Okros

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